

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MILDRED LACEN, et al.,

Plaintiffs,

-v.-

CITY OF NEW YORK, et al.,

Defendants.

21 Civ. 07371 (JHR)

ORDER OF DISMISSAL

JENNIFER H. REARDEN, District Judge:

On February 3, 2023, Defendant City of New York (“Defendant”) filed a motion to dismiss the Amended Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. *See* ECF No. 23. The deadline for Plaintiffs’ opposition was March 6, 2023. *See id.* at 1 (Defendant’s February 3, 2023 notice of motion memorializing parties’ stipulated-to briefing schedule, including that, “as agreed upon by both parties[,] . . . opposition papers, if any, are due on March 6, 2023”); *see also* ECF No. 26 at 2 (parties’ February 21, 2023 joint status letter corroborating that “opposition papers, if any, are due on March 6, 2023”). Plaintiffs did not meet that deadline, nor did they request an extension or otherwise communicate with the Court about their failure to file their opposition.

On March 21, 2023, Defendant filed a letter requesting that the Court “deem the City’s motion as unopposed and fully briefed,” noting that, “[t]o date, Plaintiffs have neither filed an opposition nor requested additional time to submit same.” ECF No. 29 at 1. Plaintiffs did not respond to Defendant’s request or even endeavor to address the arguments raised therein.

On June 14, 2023, the Court ordered Plaintiffs to show cause, by June 21, 2023, as to why Defendant’s motion to dismiss the Amended Complaint should not be deemed unopposed. *See* ECF No. 31. In that Order, the Court cautioned that, “[f]ailure to show such good cause, or otherwise indicate an intention to proceed with the lawsuit, may result in Defendant’s motion

being granted as unopposed or in dismissal of the case for abandonment or failure to prosecute pursuant to Rule 41 of the Federal Rules of Civil Procedure.” *Id.* On June 21, 2023, Plaintiffs’ counsel filed a letter in response to the Court’s June 14 Order. *See* ECF No. 33. Despite Defendant having moved to dismiss the Amended Complaint, Plaintiffs’ counsel reasoned that he had not opposed Defendant’s motion because “the issues raised in the City’s motion were addressed with the filing of [Plaintiffs’] amended complaint. A more formal response was not filed as I [*i.e.*, counsel] saw the motion to dismiss [the original Complaint] as having been addressed.” *Id.*

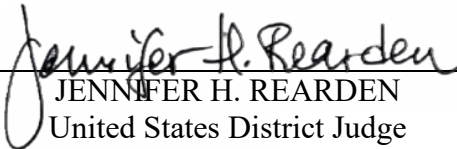
On June 30, 2023, the Court held a conference regarding the Order to Show Cause and Plaintiffs’ response thereto. *See* June 30, 2023 Minute Entry. For the reasons stated on the record at the June 30 conference, Plaintiffs have failed to show good cause for their failure to oppose Defendant’s motion to dismiss the Amended Complaint.

In light of the foregoing, the above-captioned action is hereby dismissed, albeit without prejudice, for abandonment and failure to prosecute pursuant to Rule 41 of the Federal Rules of Civil Procedure, and for substantially the reasons set forth in Defendant’s memorandum of law in support of its motion to dismiss to the Amended Complaint, *see* ECF No. 24.

Any pending motions are moot. The Clerk of Court is directed to close this case and enter judgment in favor of Defendant City of New York.

SO ORDERED.

Dated: July 18, 2023
New York, New York


JENNIFER H. REARDEN
United States District Judge